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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,911	06/14/2001	Max Aebi	8932-471	7179

7590 06/28/2004

PENNIE & EDMONDS LLP
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Washington, DC 20006

EXAMINER

REIP, DAVID OWEN

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Election/Restrictions

The reply filed on 6/3/04 is not fully responsive to the prior Office Action because: all of claims 1-35 clearly do not read on the elected Species V, the embodiment of Figs. 14-16 showing a unitary jaw/double bladed construction. The examiner respectfully disagrees with the applicant's assertion that the embodiment of the removable double blades as shown in applicants new Fig. 8A should be considered as part of Species V. First, the examiner sustains the holding new matter with regard to Fig. 8A and the associated amendments to the specification added to provide support for the new Fig. 8A. Second, assuming *arguendo* that new Fig. 8A does not constitute new matter, the embodiment of a distractor with removable double blades as depicted in Fig. 8A clearly does not structurally resemble the embodiment of the unitary double bladed distractor of Species V, and would itself constitute an additional species. Therefore, all claims directed to the blades being removable, or of different lengths, or extending at different angles, etc. (i.e., any limitation not explicitly associated with Species V, Figs. 14-16) cannot be included in a claim set that is said to read on Species V.

Since the period for reply set forth in the prior Office action has expired, this application will become abandoned unless applicant corrects the deficiency and obtains an extension of time under 37 CFR 1.136(a).

The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. In no case may an applicant reply

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outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in an Office action. A fully responsive reply must be timely filed to avoid abandonment of this application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David O. Reip whose telephone number is 703-308-3383. The examiner can normally be reached on 7 A.M.- 4 P.M. Mon-Thu and every other Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, McDermott or Shaver can be reached on 703-308-0858. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID O. REIP
PRIMARY EXAMINER